

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JASON M. WARD,

Plaintiff

Case No. 3:20-cv-00346-MMD-WGC

ORDER

v.

I. BACA, *et al.*,

Defendants

I. DISCUSSION

On June 17, 2020, this Court issued an order directing Plaintiff to file a fully complete application to proceed *in forma pauperis* or pay the full \$400 filing fee no later than August 17, 2020.

On July 15, 2020, Plaintiff filed a motion asking the Court to order the Nevada Department of Corrections ("NDOC") to release \$400 in funds to pay Plaintiff's filing fee in this case. Plaintiff indicates that he received a \$1200 stimulus payment but that he has been told by an NDOC official that he does not have sufficient funds in his account to pay the filing fee. If the NDOC has returned the stimulus funds in accordance with Internal Revenue Service instructions, that may very well be the case. In any event, the Court will not instruct prison officials to release funds that they say Plaintiff does not have in his account.

Although the Court appreciates Plaintiff's desire to be truthful in an application to proceed *in forma pauperis*, it would not be untruthful for Plaintiff to file an application to proceed *in forma pauperis* and state in the financial certificate how much money is currently in his account, which is the information that the financial certificate requires. The amount that Plaintiff believes *should* be in his account is not information that he is required to provide in that application. Therefore, if Plaintiff does not pay the \$400 filing fee, he must file an application to proceed *in forma pauperis* to begin this civil action.

Under 28 U.S.C. § 1915(a)(2) and Local Rule LSR 1-2, an inmate seeking to begin a civil action in this Court may apply to proceed *in forma pauperis* in order to file the civil action without prepaying the full \$400 filing fee. To apply for *in forma pauperis* status, the inmate must submit all three the following documents to the Court:

(1) a completed **Application to Proceed in Forma Pauperis for Inmate**, this Court's approved form (i.e. pages 1 through 3 with the inmate's two signatures on page 3),

(2) a **Financial Certificate** properly signed by both the inmate and a prison or jail official (i.e. page 4 of this Court's approved form), and

(3) a copy of the **inmate's prison or jail trust fund account statement for the previous six-month period.**

The Court will grant Plaintiff **one final opportunity** to file a fully complete application to proceed *in forma pauperis* containing all three of the required documents, or in the alternative, pay the full \$400 filing fee for this action on or before **September 18, 2020**. Absent unusual circumstances, the Court will not grant any further extensions of time. If Plaintiff is unable to file a fully complete application to proceed *in forma pauperis* with all three required documents or pay the full \$400 filing fee on or before **September 18, 2020**, the Court will dismiss this case without prejudice for Plaintiff to file a new case with the Court when Plaintiff is either able to acquire all three of the documents needed to file a fully complete application to proceed *in forma pauperis* or pay the full \$400 filing fee.

To clarify, a dismissal without prejudice means Plaintiff does not give up the right to refile the case with the Court, under a new case number, when Plaintiff has all three documents needed to submit with an application to proceed *in forma pauperis*. Alternatively, Plaintiff may choose not to file an application to proceed *in forma pauperis* and instead pay the full filing fee of \$400 on or before **September 18, 2020** to proceed with this case. The Court will retain Plaintiff's civil rights complaint (ECF Nos. 1-1, 1-2, 1-3), but the Court will not file the complaint unless and until Plaintiff timely files a fully

1 complete application to proceed *in forma pauperis* with all three documents or pays the
2 full \$400 filing fee.

3 **II. CONCLUSION**

4 For the foregoing reasons, IT IS ORDERED that the motion to release Plaintiff's
5 funds (ECF No. 4) is denied.

6 IT IS FURTHER ORDERED that the Clerk of the Court will send Plaintiff the
7 approved form application to proceed *in forma pauperis* by an inmate, as well as the
8 document entitled information and instructions for filing an *in forma pauperis* application.

9 IT IS FURTHER ORDERED that on or before **September 18, 2020**, Plaintiff will
10 either pay the full \$400 filing fee for a civil action (which includes the \$350 filing fee and
11 the \$50 administrative fee) or file with the Court:

12 (1) a completed **Application to Proceed in Forma Pauperis for Inmate** on this
13 Court's approved form (i.e. pages 1 through 3 of the form with the inmate's two
14 signatures on page 3),

15 (2) a **Financial Certificate** properly signed by both the inmate and a prison or jail
16 official (i.e. page 4 of this Court's approved form), and

17 (3) a copy of the **inmate's prison or jail trust fund account statement for the**
18 **previous six-month period.**

19 IT IS FURTHER ORDERED that, if Plaintiff does not file a fully complete
20 application to proceed *in forma pauperis* with all three documents or pay the full \$400
21 filing fee for a civil action on or before **September 18, 2020**, the Court will dismiss this
22 action without prejudice for Plaintiff to refile the case with the Court, under a new case
23 number, when Plaintiff has all three documents needed to file a complete application to
24 proceed *in forma pauperis* or pays the full \$400 filing fee.

25 ///

26 ///

27 ///

28 ///

1 IT IS FURTHER ORDERED that the Clerk of the Court will retain the complaint
2 (ECF Nos. 1-1, 1-2, 1-3) but will not file it at this time.

3 DATED: July 21, 2020

4 Walter G. Cobb
5 UNITED STATES MAGISTRATE JUDGE
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28